



State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

RESEARCH APPENDIX - **PLEASE DO NOT REMOVE FROM DRAFTING FILE**

Date Added To File: 11/11/2002 (Per: RJM)



☞ The drafting file for 2001 LRB -3642

has been transferred to the drafting file for

2003 LRB -0637

☞ This cover sheet, the final request sheet, and the final version of the 2001 draft were copied on yellow paper, and returned to the original 2001 drafting file.

☞ The attached 2001 draft was incorporated into the new 2003 draft listed above. For research purposes, this cover sheet and the complete drafting file were transferred, as a separate appendix, to the 2003 drafting file. If introduced this section will be scanned and added, as a separate appendix, to the electronic drafting file folder.

2001 DRAFTING REQUEST

Bill

Received: 08/21/2001

Received By: rmarchan

Wanted: 09/08/2001

Identical to LRB:

For: Suzanne Jeskewitz (608) 266-3796

By/Representing: erin

This file may be shown to any legislator: NO

Drafter: rmarchan

May Contact:

Addl. Drafters:

Subject: Fin. Inst. - miscellaneous

Extra Copies: 

Submit via email: NO

Pre Topic:

No specific pre topic given

Topic:

Mortgage brokers

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	rmarchan 08/27/2001	csicilia 08/30/2001		_____ _____			
/1	rmarchan 12/04/2001	csicilia 12/06/2001	rschluet 08/30/2001	_____ _____	lrb_docadmin 08/30/2001		State
/2	rmarchan 12/06/2001	csicilia 12/07/2001	pgreensl 12/06/2001	_____ _____			State
/3	rmarchan 02/04/2002	csicilia 02/11/2002	rschluet 12/07/2001	_____ _____	lrb_docadmin 12/07/2001		S&L

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
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/3			rschluet 12/07/2001		lrb_docadmin 12/07/2001		

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12/07/2001 03:03:36 PM

Page 2

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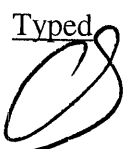
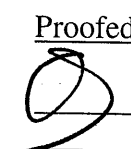
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8-30-1

FE Sent For:

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Marchant, Robert

From: Bilot, Erin
Sent: Wednesday, August 22, 2001 1:30 PM
To: Marchant, Robert
Subject: RE: Drafting Instructions

Rob,
I have one more change to the mortgage brokers draft. I apologize, I thought we were completely ready. Anyway, when we're talking about the people who are exempted from taking the initial licensing exam, we say that mortgage bankers have to have their license for 5 or more years. We would like to change that to three, the same as the mortgage brokers and loan originators.

Thanks again,
Erin Bilot
Office of Suzanne Jeskewitz
State Representative
24th Assembly District

-----Original Message-----

From: Marchant, Robert
Sent: Tuesday, August 21, 2001 2:40 PM
To: Bilot, Erin
Subject: RE: Drafting Instructions

Erin--

Thanks for the additional information. I will begin drafting the request shortly.

Rob

-----Original Message-----

From: Bilot, Erin
Sent: Tuesday, August 21, 2001 2:35 PM
To: Marchant, Robert
Subject: FW: Drafting Instructions

Rob,
I sent over a draft this morning about mortgage brokers legislation. At the end, I requested increasing the penalties for certain violations. I have received the suggestions and would like to double the penalties for each provision, however they should not rise to the level of a felony.

Thanks!
Erin Bilot
Office of Suzanne Jeskewitz
State Representative
24th Assembly District

Marchant, Robert

From: Bilot, Erin
Sent: Tuesday, August 21, 2001 2:51 PM
To: Marchant, Robert
Subject: RE: Drafting Instructions

I seem to have made another mistake. When I talk about continuing education, I said that it had to be eight hours a year, for a total of 16 over the two years. It should just say 16 over the two years. If they want to take all 16 in one year, that would be allowed.

Erin Bilot
Office of Suzanne Jeskewitz
State Representative
24th Assembly District

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Sent: Tuesday, August 21, 2001 2:40 PM
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State Representative
24th Assembly District

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Thanks!
Erin Bilot
Office of Suzanne Jeskewitz
State Representative
24th Assembly District



RJM
22

SUE JESKEWITZ

State Representative • 24th Assembly District

August 21, 2001

Requested by Representative Suzanne Jeskewitz

Please contact myself (266-3796) or Peggy Partenfelder-Moede (256-7701), with Pat Essie's office if you have any further questions.

This legislation will deal with education and licensing for mortgage brokers as well as consumer protection issues concerning mortgage brokers.

1. Education of Mortgage Brokers

Currently there is no education component required of mortgage brokers in the State of Wisconsin nor do mortgage brokers have to take an exam before a license is granted. The lack of these requirements means that anyone who wants to can be a broker. These people may be giving misinformation to consumers. I believe that requiring an initial licensing examination as well as continuing education will help assure that those providing this service to the consumer will be as informed as possible.

Initial Licensing:

I am proposing that we have an initial licensing requirement similar to that of real estate agents. No education will be required before this initial exam. We would require that everyone take a test in order to receive a license, with two exceptions: 1. If someone currently holds a mortgage broker or loan originator license and has done so for the past three or more years they are exempt and 2. If someone has been a mortgage banker for five or more years, then they are exempt. This exam would be approved by the Department of Financial Institutions (DFI), but they would not be required to administer the exam. (I believe that this will mirror insurance sales).

Continuing Education:

We would like to require eight hours a year (for a total of sixteen hours per license renewal period) of continuing education for each two year mortgage broker and loan originator license.

This curriculum would be approved by the Department of Financial Institutions, but the Department would not have any further required role. This education would be from an accredited agency, but the work would not have to be done by the Department of Regulation and Licensing.

2. Consumer Education/Protection

Standardized Broker Agreement:

I believe that there should be a standardized broker agreement that all brokers fill out. This way a consumer is able to compare the same charges from broker to broker. Different brokers will not be able to hide similar charges under different names. I would like to give the DFI rule making authority to establish the form. A copy of the standardized broker agreement that the DFI currently offers is enclosed.

Consumer Disclosures and Checklist:

I would like to require that there be a disclosure form as a protection for brokers and the consumer. This would be a checklist that the consumer would initial after a complete description of all items has been explained. I would like to give the Department of Financial Institutions the rule making authority to establish such a checklist.

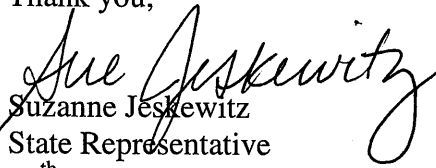
Increased Penalties for Certain Violations:

I would also like to request that DFI continue strong enforcement of existing laws and increase penalties for certain violations. Currently, under chapter 224.77, there is prohibited conduct for mortgage bankers, mortgage brokers and loan originators. The current penalty for the prohibited conducts is \$1000. I suggest that we increase it to _____? _____. I also believe that the penalty be increased in chapter 224.74 for non-licensed mortgage bankers, mortgage brokers or loan originators. Currently the fine is a maximum of \$1000 or 6 months imprisonment. I suggest that we increase it to _____? _____. (I will forward the new numbers to you as soon as possible. I am still waiting for the suggestions).

You may tell other people that you are working on this for us, however, if anyone would like a copy or would like to make suggestions, we would like them to contact us.

I am presenting this legislation at the annual meeting of the Mortgage Brokers Association on September 11th. If at all possible, I would like a draft to offer them at this meeting. I realize that this is a short time frame and I understand if it can not be done.

Thank you,


Suzanne Jeskewitz
State Representative
24th Assembly District

STANDARDIZED BROKER AGREEMENT

Borrower - Broker Disclosure Form

The borrower-broker disclosure agreement seeks to clarify, in writing, how mortgage brokers add value and are compensated. By signing this agreement, borrowers will acknowledge their awareness of the role their mortgage broker will play in the loan process. Brokers using this agreement will better be able to defend themselves against allegations of improper loan fees, or borrower's confusion regarding the broker's independent contractor status.

MODEL MORTGAGE LOAN ORIGATION AGREEMENT (MUST BE ADAPTED TO CONFORM TO APPLICABLE STATE LAW)

You, the applicant(s), agree to enter into this Mortgage Loan Origination Agreement with (Name of Company) as an independent contractor to apply for a residential mortgage loan from a participating lender with which we from time to time contract upon such terms and conditions as you may request or a lender may require. You inquired into mortgage financing with (Name of Company) on _____ (date). We are licensed as a "Mortgage Broker" under (Name of Law).

SECTION 1. NATURE OF RELATIONSHIP. In connection with this mortgage loan we are acting as an independent contractor and not as your agent. We will enter into separate independent contractor agreements with various lenders. While we seek to assist you in meeting your financial needs, we do not distribute the products of all lenders or investors in the market and cannot guarantee the lowest price or best terms available in the market.

SECTION 2. OUR COMPENSATION. The lenders whose loan products we distribute generally provide their loan products to us at a wholesale rate. The retail price we offer you--your interest rate, total points and fees--will include our compensation. In some cases, we may be paid all of our compensation by either you or the lender. Alternatively, we may be paid a portion of our compensation by both you and the lender. For example, in some cases, if you would rather pay a lower interest rate, you may pay higher up-front points and fees. Also, in some cases, if you would rather pay less up-front, you may be able to pay some or all of our compensation indirectly through a higher interest rate in which case we will be paid directly by the lender. We also may be paid by the lender based on (i) the value of the Mortgage Loan or related servicing rights in the market place or (ii) other services, goods or facilities performed or provided by us to the lender.

By signing below, applicant(s) acknowledge receipt of a copy of this signed Agreement.

MORTGAGE LOAN ORIGINATOR	APPLICANT(S)
By: _____	By: _____
Name: _____	Name: _____
Date: _____	_____
Address: _____	Address: _____

DFI
recommends



State of Wisconsin
2001 - 2002 LEGISLATURE

LRB-3642/1

RJM:.....

9-4-01

Rm NR

DNOTE

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Gen cat.
a
registration
1 AN ACT...; relating to: qualifications for mortgage broker registrants, consumer
2 mortgage brokerage agreements, granting rule making authority, and
3 providing a penalty.

Analysis by the Legislative Reference Bureau

Current law requires mortgage brokers to be registered with the division of banking in the department of financial institutions (division). Generally, a mortgage broker is a person who, on behalf of another person and for a commission, finds a loan that is secured by a mortgage. ~~The division currently issues certificates of registration with a two-year term.~~ Current law does not require an applicant for a mortgage broker registration to have any specific knowledge with regard to the laws and regulations relating to mortgage brokering.

This bill requires an applicant for a mortgage broker registration to satisfactorily complete an examination in the law of mortgage brokering. Under the bill, any person who is currently registered as a mortgage broker, mortgage banker, or loan originator (generally, a person who finds a loan on behalf of a mortgage broker or mortgage banker) is exempt from the examination requirement. This bill also requires a mortgage broker to receive at least 16 hours of education in the law of mortgage brokering during each two-year registration period. The bill permits a person other than the division to administer the required examination and provide the required education. The division must by rule, establish requirements for the approval of the content of the examination and the curriculum of education and for the approval of any persons other than the division who administer the examination or provide the education.

the

the comparison of

This bill also requires every brokerage agreement between a mortgage broker and a consumer to be in writing, in the form prescribed by rule of the division, and to contain all information required by rule of the division. Under the bill, the division must promulgate these rules for the purpose of facilitating ~~consumers in comparing~~ similar charges and total charges assessed by different mortgage brokers. The bill also requires a mortgage broker to give a consumer a disclosure statement which contains a brief explanation of the relationship between the consumer and the mortgage broker under the brokerage agreement, ~~the manner in which the mortgage broker may be compensated, and any additional information required by rule of the division.~~ ^{and} The mortgage broker must explain the content of the disclosure statement and ensure that the consumer initials or signs the statement, acknowledging that the consumer has read and understands the statement. Under the bill, a consumer generally means an individual who seeks or acquires mortgage brokerage services for personal, family, or household purposes. Current law does not contain any similar provisions with regard to mortgage brokers.

This bill also raises the maximum potential forfeiture (civil penalty) for certain violations of the mortgage brokering law from \$1,000 to \$2,000, the maximum potential fine and imprisonment (criminal penalties) for acting as a mortgage broker without a valid registration from \$1,000 and ~~6~~ ^{six} months to \$2,000 and ~~9~~ ^{nine} months, and the maximum potential liability of a mortgage broker in certain private causes of action from \$1,000 to \$2,000. ✓

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

^d ^b SECTION 1. 224.71 (1c) of the statutes is renumbered 224.71 (1e). ✓

SECTION 2. 224.71 (1~~e~~) of the statutes is created to read:

224.71 (1~~e~~) "Consumer" means a person other than an organization, as defined in s. 421.301 (28), who seeks or acquires mortgage brokerage services for personal, family, or household purposes. ✓

SECTION 3. 224.72 (4m) (title) of the statutes is amended to read:

224.72 (4m) (title) ~~ADDITIONAL REQUIREMENT~~ REQUIREMENTS FOR MORTGAGE BROKER APPLICANT. ✓

History: 1987 a. 359; 1987 a. 403 ss. 182, 256; Stats. 1987 s. 440.72; 1989 a. 45; 1991 a. 39; 1993 a. 112; 1995 a. 27 ss. 6210, 6527m, 6528m, 6535m, 6591 to 6593; Stats. 1995 s. 224.72; 1995 a. 465; 1997 a. 27, 35, 145, 191, 237, 252; 1999 a. 9, 32.

SECTION 4. 224.72 (4m) (a) (title) of the statutes is amended to read:

1 224.72 (4m) (a) (title) ~~With a~~ Special requirement for applicant with bona fide
2 office. ✓

History: 1987 a. 359; 1987 a. 403 ss. 182, 256; Stats. 1987 s. 440.72; 1989 a. 45; 1991 a. 39; 1993 a. 112; 1995 a. 27 ss. 6210, 6527m, 6528m, 6535m, 6591 to 6593; Stats. 1995 s. 224.72; 1995 a. 465; 1997 a. 27, 35, 145, 191, 237, 252; 1999 a. 9, 32.

3 SECTION 5. 224.72 (4m) (b) (title) of the statutes is amended to read:

4 224.72 (4m) (b) (title) ~~Without a~~ Special requirement for applicant without
5 bona fide office. ✓

History: 1987 a. 359; 1987 a. 403 ss. 182, 256; Stats. 1987 s. 440.72; 1989 a. 45; 1991 a. 39; 1993 a. 112; 1995 a. 27 ss. 6210, 6527m, 6528m, 6535m, 6591 to 6593; Stats. 1995 s. 224.72; 1995 a. 465; 1997 a. 27, 35, 145, 191, 237, 252; 1999 a. 9, 32.

6 SECTION 6. 224.72 (4m) (c) of the statutes is created to read: ✓

7 224.72 (4m) (c) Competency examination. In addition to the requirements of
8 sub. (2) and par. (a) and (b), as applicable, and except as otherwise provided under
9 this paragraph, ✓ an applicant for registration as a mortgage broker shall
10 satisfactorily complete an examination in the law of mortgage brokering, consistent
11 with rules promulgated by the division under sub. (7p). If the examination is
12 administered by a person other than the division, the applicant shall submit to the
13 division evidence satisfactory to the division that the applicant has satisfactorily
14 completed the examination. This paragraph ✓ does not apply to an applicant who
15 holds a certificate of registration as a mortgage banker, mortgage broker, or loan
16 originator, issued by the division, for at least three years preceding the date of
17 application. 3

18 SECTION 7. 224.72 (5) (b) of the statutes is amended to read:

19 224.72 (5) (b) Mortgage banker and mortgage broker. Except as provided in sub.
20 (7m), upon receiving a properly completed application for registration as a mortgage
21 banker or a mortgage broker, and the fee specified in rules promulgated under sub.
22 (8) and ~~satisfactory evidence of~~ upon an applicant's compliance with subs. (4) and

(4m), as applicable, the division may issue to the applicant a certificate of registration as a mortgage banker or mortgage broker.

History: 1987 a. 359; 1987 a. 403 ss. 182, 256; Stats. 1987 s. 440.72; 1989 a. 45; 1991 a. 39; 1993 a. 112; 1995 a. 27 ss. 6210, 6527m, 6528m, 6535m, 6591 to 6593; Stats. 1995 s. 224.72; 1995 a. 465; 1997 a. 27, 35, 145, 191, 237, 252; 1999 a. 9, 32.

SECTION 8. 224.72 (7) (c) 3. of the statutes is created to read:

224.72 (7) (c) 3. Submit evidence that is satisfactory to the division that, during the registration period, the mortgage broker has received at least 16 hours of education in the law of mortgage brokering, consistent with rules promulgated by the division under sub. (7p). If the education received by the mortgage broker was provided by the division, the mortgage broker need not submit evidence of receipt to the division.

SECTION 9. 224.72 (7p) of the statutes is created to read:

224.72 (7p) RULES FOR COMPETENCY EXAMINATION AND CONTINUING EDUCATION REQUIREMENTS. The division shall promulgate rules establishing requirements for the approval of all of the following:

(a) The content of examinations in the law of mortgage brokering under sub. (4m) (c) and the curriculum of education under sub. (7) (c) 3.

(b) Any persons other than the division who administer examinations under sub. (4m) (c) or provide education under sub. (7) (c) 3.

SECTION 10. 224.77 (1m) (a) of the statutes is amended to read:

224.77 (1m) (a) The division may assess against a person who is registered under this chapter a forfeiture of not more than ~~\$1,000~~ \$2,000 for each violation enumerated under sub. (1) (a) to (o) or (r).

History: 1987 a. 359; 1987 a. 403 ss. 182, 256; Stats. 1987 s. 440.77; 1993 a. 112; 1995 a. 27 ss. 6598 to 6600; Stats. 1995 s. 224.77; 1997 a. 145, 191, 237; 1999 a. 32, 82; 1999 a. 150 s. 672.

SECTION 11. 224.80 (1) of the statutes is amended to read:

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From pp 5-6
to here

1 224.80 (1) PENALTIES. A person who violates s. 224.72 (1m) may be fined not
2 more than ~~\$1,000~~ \$2,000 or imprisoned for not more than ~~6~~ 9 months or both. The
3 district attorney of the county where the violation occurs shall enforce the penalty
4 under this subsection on behalf of the state.

History: 1987 a. 359; 1987 a. 403 ss. 182, 256; Stats. 1987 s. 440.80; 1989 a. 45; 1995 a. 27 s. 6602; Stats. 1995 s. 224.80; 1997 a. 145.

5 **SECTION 12.** 224.80 (2) (a) 1. of the statutes is amended to read:

6 224.80 (2) (a) 1. Twice the amount of the cost of loan origination connected with
7 the transaction, except that the liability under this subdivision may not be less than
8 \$100 nor greater than ~~\$1,000~~ \$2,000 for each violation.

History: 1987 a. 359; 1987 a. 403 ss. 182, 256; Stats. 1987 s. 440.80; 1989 a. 45; 1995 a. 27 s. 6602; Stats. 1995 s. 224.80; 1997 a. 145.

9 **SECTION 13.** 224.79 of the statutes is created to read:

10 **224.79 Consumer mortgage brokerage agreements and consumer**
11 **disclosures. (1) FORM AND CONTENT OF CONSUMER MORTGAGE BROKERAGE AGREEMENTS.**
12 Every contract between a mortgage broker and a consumer under which the
13 mortgage broker agrees to provide brokerage services to the consumer shall be in
14 writing, in the form prescribed by rule of the division, and shall contain all
15 information required by rule of the division. The division shall promulgate rules to
16 administer this subsection. The division shall design these rules to facilitate the
17 comparison of similar charges and total charges assessed by different mortgage
18 brokers. ✓

19 **(2) CONSUMER DISCLOSURE STATEMENT.** Before entering into a contract with a
20 consumer to provide brokerage services, a mortgage broker shall give the consumer
21 a copy of a consumer disclosure statement, explain the content of the statement, and
22 ensure that the consumer initials or signs the statement, acknowledging that the
23 consumer has read and understands the statement. The consumer disclosure
24 statement shall contain a brief explanation of the relationship between the consumer

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1 and the mortgage broker under the proposed contract, a brief explanation of the
2 manner in which the mortgage broker may be compensated under the proposed
3 contract, and any additional information required by rule of the division. The
4 division shall promulgate rules to administer this subsection and, by rule, shall
5 specify the form and content of the consumer disclosure statement required under
6 this subsection. ~~and the mortgage broker~~

7 (END)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3642/1dn

RJM:.....

js

Representative Jeskewitz:

Attached is a version of the mortgage broker draft you requested. I had to make some assumptions in order to complete the draft relatively quickly, so please review the draft to make sure that it is consistent with your intent. In particular, please note the following:

1. Currently, mortgage brokers must be *registered* with the division of banking in DFI (division). Mortgage brokers are not required to be licensed. This draft retains the current registration scheme, but builds into it the competency examination and continuing education requirements you requested. ✓

2. This draft does not require the division to administer the competency examination or provide continuing education, but it would permit the division to do so if the division so chooses. If the examination or education is provided by a person other than the division, that person must meet the requirements established by rule of the division. ✓

3. The draft requires consumer mortgage brokerage agreements to be in writing. This language permits agreements to be in electronic format because, under current law, "in writing" includes non-paper formats such as email, voicemail messages, and contracts that are entered into over the Internet. However, please note that federal law does impose some additional requirements that must be satisfied in order for a consumer contract like a consumer mortgage brokerage agreement to be evidenced electronically. ✓

Also, please note that s. ~~225.75~~, stats., lists several documents that mortgage brokers must retain for a period of 25 months. Please let me know if you would also like to require mortgage brokers to retain these consumer mortgage brokerage agreements and the required disclosure statements. ✓

4. The definition of "consumer" used in the draft is generally the same as the definition of "customer" under the Wisconsin Consumer Act. There may be some controversy as to whether agricultural transactions should be excluded under the draft, as they are (for the most part) excluded from the Wisconsin Consumer Act. Currently, the consumer protections under the draft would apply to an agricultural transaction that is entered into for personal, family, or household purposes. ✓

5. You asked for the penalties in ss. 224.77 (1m) (a) and 224.80 (1), stats., to be doubled, but to not rise to the level of a felony. Potential imprisonment of one year or more ✓

224.75

constitutes a felony. Thus, the draft increases the current potential term of imprisonment in s. 224.80 (1), stats., from 6 months to 9 months, rather than to 12 months. Nine months is the term of imprisonment associated with a Class A misdemeanor. Also, the draft doubles the \$1,000 limit of liability that applies to some private causes of action under s. 224.80 (2) (a) 1., stats., in order to keep that limit parallel with the other maximum penalties. ✓

your presentation on

Please let me know if you desire any changes to the draft. Also, feel free to call if I can be of any assistance as you prepare for September 11.

Robert J. Marchant

Legislative Attorney

Phone: (608) 261-4454

E-mail: robert.marchant@legis.state.wi.us

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3642/1dn

RJM:cjs:rs

August 30, 2001

Representative Jeskewitz:

Attached is a version of the mortgage broker draft you requested. I had to make some assumptions in order to complete the draft relatively quickly, so please review the draft to make sure that it is consistent with your intent. In particular, please note the following:

1. Currently, mortgage brokers must be *registered* with the division of banking in DFI (division). Mortgage brokers are not required to be licensed. This draft retains the current registration scheme, but builds into it the competency examination and continuing education requirements you requested.
2. This draft does not require the division to administer the competency examination or provide continuing education, but it would permit the division to do so if the division so chooses. If the examination or education is provided by a person other than the division, that person must meet the requirements established by rule of the division.
3. The draft requires consumer mortgage brokerage agreements to be in writing. This language permits agreements to be in electronic format because, under current law, "in writing" includes non-paper formats such as email, voicemail messages, and contracts that are entered into over the Internet. However, please note that federal law does impose some additional requirements that must be satisfied in order for a consumer contract like a consumer mortgage brokerage agreement to be evidenced electronically. Also, please note that s. 224.75, stats., lists several documents that mortgage brokers must retain for a period of 25 months. Please let me know if you would also like to require mortgage brokers to retain these consumer mortgage brokerage agreements and the required disclosure statements.
4. The definition of "consumer" used in the draft is generally the same as the definition of "customer" under the Wisconsin Consumer Act. There may be some controversy as to whether agricultural transactions should be excluded under the draft, as they are (for the most part) excluded from the Wisconsin Consumer Act. Currently, the consumer protections under the draft would apply to an agricultural transaction that is entered into for personal, family, or household purposes.
5. You asked for the penalties in ss. 224.77 (1m) (a) and 224.80 (1), stats., to be doubled, but to not rise to the level of a felony. Potential imprisonment of one year or more

constitutes a felony. Thus, the draft increases the current potential term of imprisonment in s. 224.80 (1), stats., from 6 months to 9 months, rather than to 12 months. Nine months is the term of imprisonment associated with a Class A misdemeanor. Also, the draft doubles the \$1,000 limit of liability that applies to some private causes of action under s. 224.80 (2) (a) 1., stats., in order to keep that limit parallel with the other maximum penalties.

Please let me know if you desire any changes to the draft. Also, feel free to call if I can be of any assistance as you prepare for your presentation on September 11.

Robert J. Marchant
Legislative Attorney
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Marchant, Robert

From: Bilot, Erin
Sent: Tuesday, November 13, 2001 2:30 PM
To: Marchant, Robert
Subject: LRB 3642

Tues 12/18 in p.m.

Rob,

Attached is a memo prepared by DFI in response to LRB 3642. We would like to have changes made to reflect their concerns in Issue 1 (1), (2), and (3). Issue 2, we would like to have those things taken care of in administrative rule, so I believe that we do not need to address that in the legislation. However, you would know that for sure. If we do need to say that this will be addressed by the administrative rule, we would like to do that.

We are still working on two other issues and for both we think that we will probably make the changes, but aren't quite sure about the opposition that we will receive. I don't know if it would be easiest for you to make the changes in this draft hoping that we will keep them or to wait until we are certain that we want these changes made. The issues are: 1. Issue 3 (1) we are thinking of eliminating this exemption. 2. We think that we will require the same things of mortgage bankers that we will of mortgage brokers in this legislation. If you would rather make the changes now, feel free, and if you would rather wait until we are certain, that works, too.

Thank you very much for your work.

Erin

Erin Bilot
Office of Suzanne Jeskewitz
State Representative
24th Assembly District



State of Wisconsin
Department of Financial Institutions

Scott McCallum, Governor

John F. Kundert, Secretary

TO: Erin Bilot
Office of State Representative Suzanne Jeskewitz

FROM: Dave Anderson, Executive Assistant
Department of Financial Institutions

SUBJECT: Suggestions Regarding Proposed Legislation from the Wisconsin Mortgage
Brokers Association

DATE: October 19, 2001

Thank you for the opportunity to provide some feedback on proposed legislation by the Wisconsin Mortgage Brokers Association. As we discussed several weeks ago, we are generally supportive of almost all of the individual components of that legislation.

Relating to educational requirements, however, the proposed legislation by the Wisconsin Mortgage Brokers Association applies to mortgage brokers only. Because there are some political dynamics involved with the education issue as it relates to the Wisconsin Association of Mortgage Bankers, which opposes educational requirements, we hope you understand that the Department of Financial Institutions is not in a position to take a side on this important inter-industry issue and is officially neutral.

If educational requirements are to work effectively, however, they would have to apply to mortgage brokers and mortgage bankers across the board. If you and the Wisconsin Mortgage Brokers Association are able to reach some agreement with the Mortgage Bankers on this issue, we would recommend the following revisions to the proposed bill:

Issue I – Mortgage bankers and most mortgage brokers are not individuals. With this in mind, it would be difficult to apply educational requirements to these particular licensees. DFI would recommend creating and defining the term “principal representative,” as demonstrated below. This would serve as a mechanism to handle the conflict that exists in implementing an educational and testing requirement on an entity such as a partnership, corporation or LLC. This would also accomplish DFI’s goal to have the originator’s supervisor or management aware of the requirements and provide a minimum level of competency at the management level.

Office of the Secretary

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Items that should be included in statutory changes:

- ✓ 1) Principal Representative: This term should be defined as an individual that is in charge of the business operations of the mortgage banker or mortgage broker.

Each mortgage banker or mortgage brokerage business shall have a principal representative who shall operate the business under such representative's full charge, control, and supervision (FI has a one-year experience requirement). Each mortgage banker or mortgage brokerage business shall maintain a form as prescribed by the department indicating the business's designation of principal representative and the individual's acceptance of such responsibility. If the form is unavailable, inaccurate, or incomplete, it is deemed that the business was operated in the full charge, control and supervision by each officer, director, or ultimate equitable owner of a 10-percent or greater interest in the mortgage banker or mortgage brokerage business, or any other person in a similar capacity.

A mortgage banker or mortgage broker shall notify the department of the name and address of any new principal representative and shall document that the person has completed the educational and testing requirements of this section upon designation of a new principal representative.

- ✓ 2) Responsibility: It should be clear that there is a person within the firm that has supervisory oversight for Loan Originators. s. 224.73 Stats. establishes the relationship between a loan originator and either a mortgage banker or a mortgage broker.

Current s. 224.73 Stats. states: "Responsibility for Loan Originator. A mortgage banker or a mortgage broker is responsible for, and shall supervise the acts of, a loan originator who registers under s. 224.72 (3) as an employee of the mortgage banker or mortgage broker..." Amend s. 224.73, second sentence, to read "A mortgage banker or a mortgage broker, and the mortgage banker or mortgage broker's principal representative, is responsible for, and shall supervise the acts of..." (we could also add 'or their designee')

- ✓ 3) Educational Requirements: It should be clear that educational requirements apply to either the licensee or the principle representative[s].

After July 1, 2002, an applicant or renewal applicant's principal representative and loan originator(s) representing or attempting to represent a mortgage banker or mortgage broker must pass a written test, prescribed by the department and administered by department's designee, which covers primary and subordinate mortgage financing transactions and the provisions of this chapter (ch 224) and rules adopted under this chapter. (This would include new applicants, renewal applicants and entities with expired licenses that wish to renew)

✓ Each mortgage banker and mortgage broker must certify to the department at the time of renewal that during the 2 years prior to an application for license renewal. All principal representatives (if we allow more than one) and loan originators have successfully completed at least 14 hours of professional education programs covering primary and

subordinate mortgage financing transactions and the provisions of this chapter. Licensees shall maintain records documenting compliance with this subsection for a period of 4 years.

Issue II – DFI believes there should be more detail set out in the education program requirements either in statute or by administrative rule. Following are some of the issues that should be considered.

1) General program requirements: Professional education programs must contribute directly to the professional competency of the participants, may only be offered by permitted mortgage business entities or entities specifically exempted and may include electronically transmitted or distance education courses. Exempt entities would include accredited colleges, universities, community colleges, and area technical centers in this state, which offers or conducts mortgage business training as a condition precedent to licensure as a mortgage broker or mortgage banker.

All continuing education courses must be taught by an entity approved by the division or an exempt entity. The continuing education courses must be taught by use of a classroom, electronically transmitted, or distance education (correspondence courses).

2) Credit requirement: Each principal representative and loan originator would be required to complete 14 hours of professional education (continuing education) every 2 years. (Possibly require a part of this to be dedicated to state law e.g. ch 224, section 138.052, admin rules, etc.). Education must be completed prior to license renewal deadlines beginning June 30, 2004.

3) Compliance with continuing education requirements will be by certification at renewal time.

Issue III – In addition to the above mentioned suggestions, we continue to have questions on a number of other items that need to be addressed either from a regulatory or a policy standpoint:

1) 138.09 exemption

Loan companies involved in mortgage broker activities are exempt from separate licensure under our mortgage banking statutes. This constitutes a huge loophole through which individuals involved in mortgage brokering activities could sidestep educational as well as licensing requirements by becoming licensed as a loan company under s. 138.09 and we're wondering if the industry would consider language that would eliminate this problem.

2) Out-of-State Companies

From a practical standpoint, we are wondering how new educational requirements would apply to mortgage bankers and brokers who do not have an in-state presence. Obviously, they would have to comply with the requirements but how does the industry envision they would be able to comply.

3) Fiscal Note and Additional Cost for Licensees

There would be a fiscal note involved with the legislation, as we would require additional resources to run and manage program. Based on what we have reviewed in connection with this proposal, we would estimate a need for at least two new full-time positions, one professional position and one program assistant. Is the industry willing to accept the added costs that administration of the new requirements may create in addition to the cost they will have to bear for actually meeting the educational requirements?

4) Licensure Process

The new requirements under this proposal will significantly delay the time involved for new applicant's to obtain a license and will undoubtedly increase telephone calls, questions, etc. Is the industry prepared to respond to concerns by members on these issues and provide some education on the impact of the new requirements on the licensure process?